

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In The Matter Of:
Petition For Rulemaking Of The
Wireless Ethernet Compatibility Alliance

FCC Docket No. RM-10371

REPLY COMMENTS OF
THE AMHERST ALLIANCE
AND AMERICANS FOR RADIO DIVERSITY

THE AMHERST ALLIANCE (Amherst) is a Net-based, nationwide citizens' advocacy group. It was founded on September 17, 1998 -- at a meeting in Amherst, Massachusetts -- in order to support a viable, meaningful Low Power Radio Service in particular and greater media diversity in general.

AMERICANS FOR RADIO DIVERSITY (ARD) is a regional group of citizens who support Low Power Radio, including both Low Power FM and Low Power AM, as well as community-oriented, independently owned and operated public radio stations. Based in the Twin Cities of Minnesota, with a Membership drawn primarily from towns and cities in the Upper Midwest, ARD nevertheless addresses national issues, in national forums, along with issues arising locally and regionally.

On February 28, 2002, Amherst and ARD filed joint Written Comments in FCC Docket RM-10371: the Wireless Ethernet Compatibility Alliance (WECA) Petition For Rulemaking. The WECA proposal would apparently shift some frequencies from use by "hams" to use by wireless interests for commercial purposes.

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According to some interpretations of the WECA Petition, Part 15 broadcasting could be hindered as well.

Despite our concerns about the WECA Petition, we have read with interest -- and careful attention -- the February 14, 2002 Written Comments by Konrad Roeder of Colorado Springs, Colorado. He is an amateur radio operator who sees some merit, under certain conditions, in the WECA Petition. In recent days, as a response to his filing, we have been in touch with Konrad Roeder and with certain Part 15 broadcasters.

While we continue to oppose -- strongly -- the WECA Petition in its current form, we have also concluded that it is important for us to clarify more effectively the reasons for, and the extent of, our opposition.

DEFINING THE TERM: "COMMERCIAL"

In opposing the WECA Petition, our single biggest motivation has been the desire to prevent the entry of commercial forces into a currently non-commercial portion of the radio spectrum.

However, we may have created some unintended confusion by failing to define, with sufficient precision, what we mean when we reference "commercial" forces.

Obviously, the new equipment that would be used in this portion of the spectrum would be manufactured, for profit, by profit-making organizations. We certainly do not expect anyone to manufacture the equipment for free!

It is not the commercial origin of the new equipment which concerns us.

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Rather, it is the commercial uses to which the new equipment might be put.

To give a specific example, use of the new equipment by freenetworkers, for recreational and/or intellectual purposes, would be generally consistent with the spirit of the Amateur Radio Service and of Part 15 in general. The scale might have to be limited, to protect the "squatters rights" of "hams" and existing Part 15 broadcasters, but freenetworking itself is not inherently objectionable to us, serving as it does the general goal of empowering individuals and adding more diversity to the airwaves.

At the other end of the scale, cellphones and electric door openers would constitute commercial use of the equipment at issue -- for purposes which may enhance individual convenience but cannot match the value to society of ideas and information exchanged, and communities brought closer together, by individual broadcasters who act without a profit motive.

The practical problem is how to permit use of the new equipment for non-commercial purposes while simultaneously prohibiting its use for commercial activities. After all, an equipment manufacturer cannot control the uses of the equipment after it has been sold -- or even, in some cases, after it has been leased.

Perhaps the solution is to carefully authorize the new equipment only on a product-by-product basis, "screening" the proposed products to permit only those which are difficult (or, ideally, impossible) to utilize for profit-making activity.

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In any event, while a solution to this dilemma may be achievable, the WECA Petition does not appear to have recognized this issue in the first place -- let alone tried to formulate a solution.

For this reason, among others, we strongly advise the Commission to reject the current version of the WECA proposal.

FATAL FLAWS IN THE WECA PETITION

Overall, we see 3 fatal flaws in the current version of the WECA Petition. The WECA Petition would allow use of the affected frequencies, by wireless technologies, for commercial purposes. As we have noted above, this aspect of the WECA Petition is our single largest concern -- and was the primary motivation for our intervention in this proceeding.

The proposed commercial incursion into the Part 15 portion of the radio spectrum -- meaning the contemplated use of the new wireless equipment for commercial gain -- concerns us for each of 2 reasons:

In the wake of various forms of broadcasting deregulation, coupled with the onerous Congressional mandate for use of auctions to award all commercial radio station licenses, megacorporate radio stations have rendered bankrupt and/or acquired enormous numbers of formerly independent local stations.

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These concentrations of commercial ownership on the radio spectrum have reached record highs, with no clear end to the process in sight.

In light of this huge (and historically new) over-representation of large commercial entities on the radio spectrum, we are adamantly opposed to surrendering even one more piece of presently non-commercial spectrum to commercial forces that are already grossly over-represented on the radio spectrum.

Our nation has melted down enough sacred artifacts in the process of building a Golden Calf.

As we have noted earlier, we do not know whether any theoretical restrictions on commercial use of wireless equipment could, or would, be enforceable in practice. Until and unless someone can present a credible way to enforce such a distinction, we can see only one line of defense against the commercialization of Part 15: that is, continuing to allow only the use of equipment (such as ham radio gear) which is suited exclusively -- or as close to "exclusively" as possible -- for non-commercial pursuits. Absent a constructive and credible alternative, the Commission needs to keep this portion of the radio spectrum completely sealed off from any equipment with a potential for commercial use.

Thus, as one look at our February 28 Written Comments will reveal, we see ourselves as defending both "hams" and Part 15 broadcasters against immediate and/or eventual incursion of their frequencies by commercial uses -- for purposes which may

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enhance individual convenience, but offer little real value to the community as a whole.

Rather than favoring "hams" over Part 15 broadcasters, or vice versa, we are actively encouraging "hams" and Part 15 broadcasters to join forces against the common threat of dual domination of the dial by "The Unholy Alliance" of megacorporations and National Public Radio.

We agree with one important aspect of the February 28, 2002 Written Comments of ARRL: the observation that the WECA Petition is not sufficiently clear. At Amherst and ARD, we are still not certain, in every case, exactly who is affected how -- and when. In particular, some Part 15 broadcasters believe they will lose ground under the proposal in FCC Docket RM-10371, while other Part 15 broadcasters believe they will gain ground.

It is one thing to "leave some blanks to fill in" when drafting a Petition For Rulemaking. Some technical details can usually be left for illumination and resolution during the course of public comments.

It is something else entirely when the basic intent of a Petition For Rulemaking is so unclear that some of the affected parties cannot determine with certainty whether they would be beneficiaries or victims of the proposal.

Under such circumstances, the wisest course is to reject the proposal, until and unless it has been clarified enough to permit an informed decision on its merits.

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Finally, the WECA Petition, if we are reading it correctly, would permit new broadcasting on channels presently reserved for maritime communications.

Neither Amherst and ARD represents any maritime broadcasting interests -- yet!! -- but we do recognize that maritime communications can be important for trade and commerce, as well as literally a matter of life and death under some circumstances.

Therefore, we view the possibility of interference with maritime radio traffic as a matter of indirect importance to all consumers -- and, sometimes, as a matter of grave personal importance to all mariners, whether they are "pleasure boaters" or seafaring professionals.

While maritime signals are typically transmitted and/or received on water, and most of the United States is inland from the coastlines, our sense of "the public interest" compels us to ask 2 questions:

Most of the land area of the United States is more than 25 miles from the coastlines, but most of its population is not. Two coastal metropolitan areas, New York and Los Angeles, account in and of themselves for 15% of the country's total population.

Therefore: Why does the Petition treat signals originating in New Mexico the same way as signals originating in Rhode Island? Why doesn't the WECA Petition offer extra protection for Maritime Bands when the competing transmissions originate on or near a coastline?

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How many Maritime Band transmissions -- if any -- are sent and/or received by vessels sailing on lakes or rivers? If inland water traffic relies significantly on maritime radio communications, is it going to be sufficiently protected against possible interference from competing inland signals?

Until questions such as ours can be answered satisfactorily, prudence compels us to treat the possible pre-emption of Maritime Band signals with extreme caution.

CAN THIS PROPOSAL BE SALVAGED?

Perhaps it can.

If the 3 fatal flaws in the WECA Petition can be corrected -- that is, if the authorized wireless transmissions can be limited to non-commercial purposes only, and if the proposal is presented in more easily understandable terms, and if our concerns about the reliability of maritime transmissions can be resolved through corrective action and/or sufficient explanation -- then THE AMHERST ALLIANCE and AMERICANS FOR RADIO DIVERSITY might be able to support, or at least accept, WECA's proposal.

Perhaps WECA itself could take the necessary actions to revise and clarify its Petition. Alternatively, perhaps the Commission could make the necessary corrections in the course of converting the WECA Petition into an actual proposed rule.

In any event, our "bottom line" remains this: If the flaws we have cited are not corrected, we must continue vehemently opposing the proposal in RM-10371.

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Respectfully submitted,

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A copy of our Reply Comments has been sent to every party who sent a copy of their Written Comments to us.